under a very similar statute where the recovery was allowed even after the plaintiff had been a resident at the asylum, *Kellog* v. *Cochran,* 87 Cal. 192. These cases involving a statutory proceeding, though very rare, raise an interesting inquiry—from an entirely different angle—into the requisite nature of the judicial proceeding. While the opinions have said nothing about the ultimate nature of the judicial proceedings as regards the contested rights of the party maliciously sued, yet it is evident from an examination of the cases that the purpose of the suit in every instance was to impair some valuable right enjoyed by the defendant; rights *in rem* were always involved. In the principal case, no right which the plaintiff desired to preserve was at stake in the malicious suit: the right to reside in the asylum was, no doubt, far from his desire; nor does the statute authorize a finding by the justice of the peace to force his residence there. It is clear that the plaintiff could not prevail if the proceedings instituted were extra-judicial, *Turpin* v. *Remy,* 3 Blackf. 210. To keep the case within the rule, therefore, the court lays down a broad definition of judicial proceeding: a proceeding by a regularly constituted court of justice clothed with authority to hear and determine a question of fact, or a mixed question of law and fact, upon evidence written or oral, to be produced before such court, and thereupon to enter a decision affecting the material rights or interests of one or more persons or bodies corporate. The court goes on the ground that the gravamen of the action for malicious prosecution is the fact that the plaintiff "has been improperly made the subject of legal process to his damage." It would seem that the holding of the court works best to prevent the use of the judicial machinery for malicious purposes, which is, after all, the real reason for allowing the action.

NEGLIGENCE — LICENSEE OR INVITEE — PERSON ACCOMPANYING PURCHASER INTO STORE.—Two boys entered a grocery store, only one of whom intended to purchase. As a clerk opened a case of goods the other, (the plaintiff), was blinded in one eye by a flying piece of metal. He brought an action and was nonsuited in the trial court. *Held,* nonsuit proper; the plaintiff was a mere licensee, not an invitee, and only entitled to protection against willful injury. *Fleckenstein* v. *Great Atlantic and Pacific Tea Co.,* (N. J., 1917), 102 Atl. 700.

The fundamental difference between a licensee and invitee is the purpose with which one is on the other's premises. In the words of KNOWLTON, J., "* * * to come under an implied invitation as distinguished from a mere licensee, the visitor must come for a purpose connected with the business in which the occupant is engaged, or which he permits to be carried on there. There must at least be some mutuality of interest in the subject to which the visitor's business relates, although the particular thing which is the object of the visit may not be for the benefit of the occupant." *Plummer* v. *Dill,* 156 Mass. 426. In that case the plaintiff went on defendant's premises in search of a servant and was held to be only a licensee. See also *Indermaur* v. *Dames,* 14 L. T. R. (N. S.) 484. A woman, who because she was of the same race and religion as a dead man, came to the house he had occupied

to attend his wake, she was held but a license. *Hart* v. *Cole,* 156 Mass. 475. But where a boy accompanied his father to inspect a house that the latter contemplated renting, he was an invitee, since it was for the landowner's interest that members of the plaintiff's family inspect the house to aid the prospective tenant in his decision as to renting it, *Kalus* v. *Bass,* 122 Md. 467. And a woman was an invitee who accompanied her husband to a lumber yard to aid in the purchase for her of an ironing board. *Davis* v. *Ferris,* 53 N. Y. Supp. 571. In the principal case the plaintiff was no more than a licensee, a volunteer, although his companion was an invitee. This separation into different characters of two persons who come together, stay together, and go together, is analogous to the considering of one man as an invitee as to part of the occupant's premises and a licensee as to the rest. In *Herzog* v. *Hemphill,* 7 Cal. App. 116, the plaintiff entered defendant's tamale stand to buy tamales. Here he was an invitee. But when he went into the cellar for purposes of nature he was a licensee as to that portion of the premises and had only the rights of such.

PRINCIPAL AND AGENT—TRAVELING SALESMAN—AUTHORITY TO TAKE ORDERS.—The traveling salesman of a vendor took an order from the trustee of a saloon attached by creditors, agreeing that his principal should come in *pro rata* with the other creditors and that the vendee was to be bound only as trustee and not personally. The principal shipped without knowledge of the restricted liability stipulated for. *Held,* three justices dissenting, it was within the scope of the agent's authority to take an order with such an agreement, and the principal was bound by it. *Rothchild Bros.* v. *Kennedy,* (Ore., 1917), 169 Pac. 102.

The general rule of law as to the extent of a drummer's authority can be simply stated. In common with other selling agents, he has power within the limits openly fixed by the principal or determined by usage and custom, to agree upon the terms of the sale and do what is incidentally necessary to effectuate it. *Daylight Burner Co.* v. *Odlin,* 51 N. H. 56; *Blaess* v. *Nichols,* 115 Ia. 373; *Leach* v. *Beardslee, 22* Conn. 404; STORY OF *AGENCY,* (Ed 8), sec. 106; TIFFANY ON AGENCY, sec. 48 *et seq.* The terms he makes must be usual and reasonable, not extraordinary. *Beck* v. *Freund,* 117 N. Y. Supp. 193; *Putnam & Co.* v. *French,* 53 Vt. 402; MECHEM ON AGENCY (Ed. 4), sec. 362. But the application of the rule to particular cases in which the agent has made an agreement with the vendee often brings the question of custom and reasonableness squarely before the court. This has led to the laying down of several doctrines. An agent may not sell at a price so far below the market price as to put the vendee on inquiry as to his authority. *Mabray* v. *Kelly-Goodfellow Shoe Co.,* 73 Mo. App. 1; *Brown Grocery Co.* v. *Becket, 22* Ky. Law Rep. 393. He cannot bind the principal by secret rebate agreements. *Tollerton & Warfield Co.* v. *Gilruth,* 21 S. Dak. 320; *Taylor Mfg. Co.* v. *Brown,* 4 Tex. Ct. of App., Civ. C. 19. He cannot take satisfaction of his personal obligation to the vendee as payment. *Shoninger* v. *Peabody,* 59 Conn. 588. He cannot make warranties not recognized by